

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 15815US02)

**In the Application of:**

Stephen Gordon et al.

**Serial No.:** 10/726,814

**Filed:** December 3, 2003

**For:** PROCESSING HIGH DEFINITION  
VIDEO DATA

**Examiner:** Jessica M. Roberts

**Group Art Unit:** 2621

Transmitted via the Office electronic filing  
system **June 14, 2010.**

**APPLICATION FOR RECONSIDERATION OF THE  
DETERMINATION OF PATENT TERM ADJUSTMENT  
UNDER 35 U.S.C. 154(b)  
ACCOMPANYING THE NOTICE OF ALLOWANCE  
(37 CFR § 1.705)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

The applicant respectfully requests reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed March 16, 2010, ("the Decision") respecting the present application. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States

Patent and Trademark Office (USPTO) to verify the correct patent term adjustment.

The Applicant's calculation shows that the correct patent term adjustment in the Decision is 1853 days.

The bases under § 1.702 for the adjustment are as follows: The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are given below.

### **Positive Patent Term Adjustment**

#### **Three Year Guarantee**

#### **(35 USC § 154(b)(1)(B))**

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 1388 days, minus 146 days consumed by an appeal, for a net adjustment of 1242 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was December 3, 2003,
- the third anniversary of the actual filing date was December 3, 2006.

The patent term adjustment under the three-year rule was reduced by an appeal.

- review by the Board or a Federal court began on the date the Notice of Appeal was filed, i.e. September 24, 2008,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and Interferences decision, a Federal court decision, or a Board

remand, or (2) the date prosecution was reopened, i.e. February 17, 2009;

- the time consumed by the appeal thus ended on February 17, 2009, after an interval of 146 days.
- The patent term adjustment under the three-year rule of 1388 days, reduced by appeal time of 146 days, is thus 1242 days.

### **Reductions in Patent Term Adjustment**

#### **Removing Overlap**

- Two or more grounds of delay overlap for the following dates: from December 3, 2006, to November 21, 2007, totaling 353 days of delay. This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

#### **Three Months to Respond to Office actions (37 CFR § 1.704(b))**

The applicant is contesting the following application(s) of 37 CFR § 1.704(b) to reduce the patent term adjustment in the present application.

#### **Period from (beginning date) to (ending date)**

- The pertinent Office action was mailed on February 17, 2009,
- The date three months after the mailing date of the Office action is Sunday, May 17, 2009, (BEGIN DATE, stating day of the week and if it is a holiday))
- The response to the Office action was filed on Monday, May 18, 2009, (END DATE, stating day of the week)
- The reduction in the patent term adjustment proposed by the USPTO is 1 day,
- The Applicant's position is that the present Office action response filed on the first business day after a deadline falling on a weekend

or holiday is not late, establishing the correct reduction in patent term adjustment is 0 days. The basis for this position is 37 CFR § 1.6(a)(1), which states in relevant part, “The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia,” and 37 CFR § 1.7(a), which states in relevant part: “When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday.” In this case, 37 CFR § 1.7(a) is applicable because the last day set by statute (35 USC § 154(b)(2)(C)(ii)) for taking the action of filing a response to an Office action without being “deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application,” falls on a Saturday, Sunday, or on a Federal holiday within the District of Columbia.

#### **Net Patent Term Adjustment**

The changes requested by the Applicant to the USPTO patent term adjustment determination in the Notice of Allowance are as follows:

- **Three Year Guarantee  
(35 USC § 154(b)(1)(B))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO</b>	0
<b>Applicant Calculation</b>	1242

## Reductions in Patent Term Adjustment

- **Removing Overlap**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	353

- **Three Months to Respond to Office actions  
(37 CFR § 1.704(b))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	1
<b>Applicant Calculation</b>	0

### **Conclusion**

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the net patent term adjustment proposed by the Applicant is thus 1853 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

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**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/726,814

Filing or 371(c) Date:	12-03-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	963
USPTO Adjustment(days):	-	Explanation Of Calculations	

**Patent Term Adjustment History**

Date	Contents Description	PTO(Days)	APPL(Days)
03-16-2010	Mail Notice of Allowance		
03-04-2010	Document Verification		
03-04-2010	Notice of Allowance Data Verification Completed		
12-12-2009	Date Forwarded to Examiner		
12-04-2009	Response after Non-Final Action		30
12-04-2009	Request for Extension of Time - Granted		⬆
08-04-2009	Mail Non-Final Rejection		⬆
08-03-2009	Non-Final Rejection		
05-21-2009	Date Forwarded to Examiner		
05-18-2009	Response after Non-Final Action		1
02-13-2009	Non-Final Rejection		
12-12-2008	Appeal Brief Review Complete		
12-12-2008	Date Forwarded to Examiner		
11-24-2008	Appeal Brief Filed		
09-24-2008	Notice of Appeal Filed		27
09-24-2008	Request for Extension of Time - Granted		⬆
08-29-2008	Mail Advisory Action (PTOL - 303)		⬆
08-29-2008	Advisory Action (PTOL-303)		⬆
08-08-2008	Date Forwarded to Examiner		⬆
07-25-2008	Amendment after Final Rejection		⬆
05-28-2008	Mail Final Rejection (PTOL - 326)		⬆
05-27-2008	Final Rejection		
03-12-2008	Date Forwarded to Examiner		
02-21-2008	Response after Non-Final Action		
11-21-2007	Mail Non-Final Rejection	1021	
11-20-2007	Non-Final Rejection	⬆	
10-25-2007	Case Docketed to Examiner in GAU	⬆	
10-17-2007	Case Docketed to Examiner in GAU	⬆	
10-10-2007	Miscellaneous Incoming Letter	⬆	
04-27-2007	Transfer Inquiry to GAU	⬆	
04-03-2007	Correspondence Address Change	⬆	

04-03-2007	Change in Power of Attorney (May Include Associate POA)	⬆
02-15-2007	Transfer Inquiry to GAU	⬆
10-27-2006	IFW TSS Processing by Tech Center Complete	⬆
06-20-2005	Miscellaneous Incoming Letter	⬆
03-05-2004	Application Return from OIPE	⬆
03-05-2004	Application Return TO OIPE	⬆
03-05-2004	Application Dispatched from OIPE	⬆
03-05-2004	Application Is Now Complete	⬆
02-11-2004	Cleared by OIPE CSR	⬆
12-26-2003	IFW Scan & PACR Auto Security Review	⬆
12-03-2003	Initial Exam Team nn	⬆

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		PTO Calculation	

DATE	EVENT	PTO Delay	Appl. Delay
Tuesday, September 21, 2010	Projected issue date		
Tuesday, March 16, 2010	Mail Notice of Allowance		
Thursday, March 04, 2010	Document Verification		
Thursday, March 04, 2010	Notice of Allowance Data Verification Completed		
Saturday, December 12, 2009	Date Forwarded to Examiner		
Friday, December 04, 2009	Response after Non-Final Action		30
Friday, December 04, 2009	Request for Extension of Time Granted		
Wednesday, November 04, 2009	Three months after Office action		
Tuesday, August 04, 2009	Mail Non-Final Rejection		
Monday, August 03, 2009	Non-Final Rejection		
Thursday, May 21, 2009	Date Forwarded to Examiner		
Monday, May 18, 2009	Response after Non-Final Action		1
Sunday, May 17, 2009	Three months after Office action		
Tuesday, February 17, 2009	Mail Non-Final Rejection		
Friday, February 13, 2009	Non-Final Rejection		
Friday, December 12, 2008	Appeal Brief Review Complete		
Friday, December 12, 2008	Date Forwarded to Examiner		
Monday, November 24, 2008	Appeal Brief Filed		
Wednesday, September 24, 2008	Notice of Appeal Filed		27
Wednesday, September 24, 2008	Request for Extension of Time Granted		
Friday, August 29, 2008	Mail Advisory Action (PTOL - 303)		
Friday, August 29, 2008	Advisory Action (PTOL-303)		
Thursday, August 28, 2008	Three months after Office action		
Friday, August 08, 2008	Date Forwarded to Examiner		
Friday, July 25, 2008	Amendment after Final Rejection		

[illegible]

5/17/2009 was a Sunday

